

Appl. No. 10/764,007  
Response Dated June 12, 2006  
Reply to Office Action of November 25, 2005

**Amendments to the Drawings:**

The attached sheet of drawings includes changes to FIG. 2. This sheet replaces the original sheet including FIG. 2.

Attachment: Replacement Sheet

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### REMARKS

#### STATUS OF THE CLAIMS

Claims 1-19 are currently pending in this application. Claims 1, 8, and 19 have been amended. Applicants believe no new matter has been added by these changes. Favorable reconsideration and allowance of the claims are respectfully requested.

#### OBJECTIONS TO THE DRAWINGS

The Drawings have been objected to for allegedly indicating unclear relationships between depicted elements. Pursuant to a telephone conversation between the Examiner and the undersigned on February 27, 2006, Figure 2 has been amended to include "(122)." This reflects the language found on page 7 of the Specification, stating that "in one embodiment, deactivation system 200 may be representative of, for example, deactivation system 122."

During the telephone conversation, the Examiner indicated that this change would be sufficient to overcome the outstanding objections to the Drawings. Accordingly, Applicants respectfully request that these rejections be withdrawn.

#### CLAIM REJECTIONS – 35 U.S.C. § 112

Claims 1-19 have been rejected under 35 U.S.C. § 112 as being allegedly indefinite. Applicants respectfully request reconsideration for at least the following reasons.

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Independent claims 1 and 8 have been amended to recite "said second perimeter being substantially within said first perimeter." Applicants assert that this amendment resolves any potential lack of clarity. Accordingly, withdrawal of this rejection is respectfully requested.

Dependent claim 18, recites a "marker detector" and an "interrogation zone". The Examiner asserts that the relationship of these terms to "detection module" and "detection zone" features recited in claim 8. Applicant respectfully disagrees. Illustrative examples of a marker detector and an interrogation zone may be found, for example in Figure 1 and its accompanying description. Detection module and detection zone examples are provided in Figure 2 and its accompanying description. Notably, the Specification states on the paragraph bridging pages 6 and 7 that "in one embodiment, deactivation system 200 may be representative of, for example, deactivation system 122."

Accordingly, Applicants submit that the relationships between the features of claims 18 and 8 are clear. Thus, withdrawal of this rejection is respectfully requested.

With respect to claim 19, the Examiner asserts that the term "electronic article surveillance marker" is unclear. This claim has been amended to recite "said electronic article surveillance marker." Applicants respectfully request that this rejection be withdrawn.

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CLAIM REJECTIONS – 35 U.S.C. § 102(b)

Claims 1-2 are rejected under 35 U.S.C. §102(b) as being allegedly anticipated by U.S. Patent Application Publication No. 2003/0001007 to Lee et al. ("Lee"). Applicants respectfully request that this rejection be withdrawn for at least the following reasons.

As discussed above, amended claims 1 and 8 recite "said second perimeter being substantially within said first perimeter." In rejecting the claims, the Examiner points to Lee at paragraphs [0088]-[0094], and at Figures 1, 10, and 18-20. More particularly, the Examiner points to various dashed lines in Figure 20 as indicating perimeters.

These dashed lines of Lee correspond to zones having different perimeters. However, none of such perimeters are within (or substantially within) another. Accordingly, Applicants assert that Lee fails to teach each and every element recited in claims 1-2. Accordingly, withdrawal of this rejection is respectfully requested.

CLAIM REJECTIONS – 35 U.S.C. § 103(a)

Claims 3, 8-11, and 18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Lee. Applicant respectfully request withdrawal of this rejection.

Claim 3 depends from claim 2. Accordingly, Applicants assert that this claim is patentable over Lee for at least the reasons set forth above.

As indicated above, independent claim 8 has been amended to recite "said second perimeter being substantially within less than said first perimeter." Thus, Applicants assert that the features of claim 8 are neither taught nor suggested by Lee for at least the reasons set forth above. Claims 9-11 and 18 depend from claim 8 and are also patentable

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over Lee. This is because, when an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See, e.g.*, MPEP § 2143.03.

For at least the above reasons, Applicants respectfully request that the rejections under 35 U.S.C. § 103 be withdrawn. However, Applicants do not otherwise concede the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicants hereby reserve the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, and based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

#### ALLOWABLE SUBJECT MATTER

Applicants thank the Examiner for indicating the allowability of claims 4-7, 12-17, and 19 if amended to overcome the rejections under 35 U.S.C. § 112. These claims, however, depend from independent claims, as previously discussed. Therefore, it is respectfully submitted that these claims represent patentable subject matter in their current form for at least the same reasons given for the independent claims.

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CONCLUSION

It is believed that claims 1-19 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present patent application.

Respectfully submitted,

KACVINSKY LLC

s/John A. Harroun/s  
John A. Harroun, Reg. No. 46,339  
Under 37 CFR 1.34

Dated: June 12, 2006

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June 12, 2006

Date of Deposit

Deborah L. Higham

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